IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6226 of 1989
with
SPECIAL CIVIL APPLICATION No 4706 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAILASH EXPLOSIVES & CO.

Versus

STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 6226 of 1989
& 4706 of 1990
MS ARCHANA ACHARYA for MR SB VAKIL for Petitioner No. 1
MR UDAY BHATT AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 29/06/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

Both these petitions were filed in the year 1989-90 for challenging the provisions of the Gujarat Mineral Rights Tax Act, 1985 and particularly Section 3 thereof as unconstitutional on the ground that they were beyond the legislative competence of the State Legislature. The petitioners have also challenged notification dated 29.10.1985 issued by the State Government in the Industries, Mines and Energy Department in exercise of the powers conferred by the provisions of Section 1(3) of the said Act appointing the 1st day of November 1985 as the date on which the said Act was to come into force, and also another notification of even date stipulating the rates of tax for different minerals in exercise of the powers conferred by Section 3 of the said Act.

2. While issuing notice in Special Civil Application No.6226 of 1983, this Court had granted ad-interim relief of stay of recovery on condition that the petitioner deposits with the authority 50% of the tax on mineral rights as and when they fall due and furnishes bank guarantee for the remaining 50% of the amount. The ad-interim relief was confirmed on 11.12.1990. Similar relief was also granted in Special Civil Application No.4706 of 1990.

3. When these petitions have reached final hearing today, Ms Archana Acharya, appearing for Mr SB Vakil for the petitioners submits that the controversy raised in these petitions is squarely covered by the decision of the Hon'ble Supreme court in the case of India Cement Ltd. vs. State of Tamilnadu & Ors., 1990 (1) SCC 12 and also by the decision dated 22.4.1991 of the Apex Court in Writ Petition No.1 of 1989 and connected matters.

4. Mr Uday Bhatt, learned AGP appearing on behalf of the respondent-authorities is not in a position to dispute the aforesaid legal position.

5. In the aforesaid decision dated 22.4.1991 in Writ Petition No.1 of 1989, the Division Bench of the Apex Court dealt with the question of constitutional validity of the very legislation i.e. Gujarat Mineral Rights Tax Act, 1985 and held that the decision of the Apex Court in India Cement Ltd. vs. State of Tamilnadu (supra) was applicable to the aforesaid legislation also. The main

ground of attack was that after the Parliament legislated in exercise of the powers vested in it by Entry 54 of List I of the 7th Schedule and the Mines and Minerals (Regulations and Development) Act, 1957 came into force, the legislative competency of the State was lost and, therefore, the State of Gujarat had no right to levy the tax as demanded under the said Act and the legislation must be taken to be ultra-vires of the Constitution.

We may also note at this stage that after allowing the writ petition by granting the aforesaid declaration and while quashing the demand as being ultra-vires and discharging the bank guarantees, the Apex Court directed that whatever amount was already collected by the State would not be refundable either in these cases before the Apex Court or to any one in separate proceedings.

6. Following the aforesaid decision and in view of the aforesaid declaration made by the Apex Court and the aforesaid directions, we allow the petitions and direct the respondents to abide by the aforesaid declaration made by the Apex Court in Shri Aspibhai Navalbhai Wadia vs. State of Gujarat, Writ Petition No.1 of 1989 decided on 22.4.1991. We further direct that the bank guarantees furnished by the petitioners are discharged and whatever has been already collected by the State would not be refundable to the petitioners.

7. The petitions are accordingly allowed. Rule is made absolute to the aforesaid extent only in each of the petitions with no order as to costs.

(M.S. SHAH, J.)

(D.A. MEHTA, J.)
zgs/-